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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board ("Board") held a General meeting on October 29, 2002, at the San Francisco Marriott, Pacific I Room, 55 Fourth Street, San Francisco, California.

2. **ROLL CALL**

Frederick E. (Fritz) Hitchcock, President of the Board, called the General meeting to order at 9:10 a.m.

Present:	Robert V. Branzuela	Tom Novi
	Wendy Brogin	Executive Director
	Robert T. (Tom) Flesh	Howard Weinberg
	Frederick E. (Fritz) Hitchcock	General Counsel
	Angelo Quaranta	Robin Parker
	Alan Skobin	Senior Staff Counsel
	Solon Soteras	Cara O'Neill-Stewart
	Glenn E. Stevens	Staff Counsel
	David W. Wilson	

3. **APPROVAL OF THE MINUTES FROM THE SEPTEMBER 10, 2002, GENERAL MEETING, AND OCTOBER 3, 2002, SPECIAL MEETING**

Mr. Soteras moved to adopt the September 10, 2002, General Board meeting minutes. Mr. Flesh seconded the motion. The motion carried unanimously.

Mr. Wilson moved to adopt the October 3, 2002, Special Board meeting minutes. Mrs. Brogin seconded the motion. Messrs. Branzuela, Quaranta, Skobin, and Soteras did not vote because they were not present at the October 3, 2002, Special meeting. The motion carried unanimously.

4. **WELCOMING OF WILLIE BROWN, MAYOR OF SAN FRANCISCO – BOARD DEVELOPMENT COMMITTEE**

This matter was postponed pending the arrival of Mayor Willie Brown.

5. **DISCUSSION OF eBAY BUSINESS MODEL AND VEHICLE AUCTIONS BY JOSEPH E. SULLIVAN, DIRECTOR OF COMPLIANCE AND LAW ENFORCEMENT RELATIONS, SENIOR COUNSEL, TRUST AND SAFETY, eBAY – BOARD DEVELOPMENT COMMITTEE**

This matter was postponed pending the arrival of Mayor Willie Brown.

6. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board shall convene in a closed Executive Session to deliberate on the decisions to be reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

**CONSIDERATION OF PROPOSED DECISION**

FRESNO DODGE, INC., dba FRESNO DODGE v. DAIMLERCHRYSLER MOTORS CORPORATION  
Protest No. PR-1763-01

Consideration of the Administrative Law Judge's Proposed Decision, by the Public members of the Board.

Mr. Stevens, Board Vice President, presided over Agenda item 6.

Mr. Stevens informed the members and audience that the parties are attempting to settle this matter and have requested that consideration of the Proposed Decision be continued pursuant to stipulation until the January 2003, General meeting. This matter was taken off the agenda.

7. **CONSIDERATION OF PETITION OBJECTED TO PURSUANT TO TITLE 13, CALIFORNIA CODE OF REGULATIONS, SECTION 557**

PIONEER CENTRES OF SAN DIEGO, INC., a California corporation v. LAND ROVER NORTH AMERICA, INC.  
Petition No. P-448-02

First consideration by the Public members of the Board pursuant to Title 13, California Code of Regulations, section 554, et seq.

Mr. Stevens, Board Vice President, presided over Agenda item 7.

Mr. Stevens informed the members that this matter was placed on the agenda in an abundance of caution in the event there was an objection. Given there were no objections, this matter was taken off the agenda.

8. **ANNUAL UPDATE ON BOARD CONSUMER MEDIATION PROGRAM – ADMINISTRATION COMMITTEE**

Mr. Hitchcock presided over the remaining agenda items. The members were provided with a memo from Tom Novi and Dawn Kindel updating the Consumer Mediation Services Program. Miss Kindel informed the members that the Program was running smoothly and had achieved the same resolution rate as last year. Mr. Skobin requested that the Administration Committee review how referrals to other agencies are handled. Mrs. Brogin supported Mr. Skobin's suggestion. Mr. Flesh indicated that it would be helpful if the next report contained historical information and statistics.

9. **CONSIDERATION OF A PROPOSED DOCUMENT RETENTION POLICY – ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi, Howard Weinberg, and Dawn Kindel concerning a proposed Document Retention Policy. Mr. Weinberg began explaining the Committee Recommendation when Mayor Brown arrived. This matter was postponed until after completion of Agenda items 4 and 5.

4. **WELCOMING OF WILLIE BROWN, MAYOR OF SAN FRANCISCO – BOARD DEVELOPMENT COMMITTEE**

The members introduced themselves to Mayor Brown who then welcomed the Board to San Francisco. Mayor Brown recanted his experience with the Board while a member of the Legislature. Mayor Brown commented on the "astronomical" contribution the automotive industry makes to the State of California. Lastly, Mayor Brown indicated that he was available to assist the Board – he was part of the Board's birth and he was delighted that the Board was holding its meeting in San Francisco. The members expressed their appreciation in Mayor Brown's attendance.

5. **DISCUSSION OF eBAY BUSINESS MODEL AND VEHICLE AUCTIONS BY JOSEPH E. SULLIVAN, DIRECTOR OF COMPLIANCE AND LAW ENFORCEMENT RELATIONS, SENIOR COUNSEL, TRUST AND SAFETY, eBAY – BOARD DEVELOPMENT COMMITTEE**

Joseph E. Sullivan, Esq., Senior Counsel, Trust and Safety, eBay, made an educational presentation to the members concerning the eBay business model and eBay motors. Mr. Sullivan was available to answer member and audience questions.

9. **CONSIDERATION OF A PROPOSED DOCUMENT RETENTION POLICY – ADMINISTRATION COMMITTEE – ADMINISTRATION COMMITTEE**

Agenda item 9 was resumed. In drafting a proposed Document Retention Policy, Mr. Weinberg informed the members that the staff had solicited input from other agencies. The driving force in drafting a Policy is the cost in storing the records. The Board has maintained its records since its inception in 1967. The proposed Policy is consistent with that of the Department of Motor Vehicles.

The Committee's Proposed Document Retention Policy is as follows:

1. The Board's judicial and administrative case files shall be retained in their entirety, including exhibits and transcripts, at the Board's offices for a period of ten years after the case is no longer active.
2. After the ten-year period set forth in paragraph 1, above, all Final Decisions along with all briefs submitted at the close of the administrative record will be separately retained as permanent public records, and stored at the Board's offices. The remainder of each file, i.e., exhibits and transcripts, should then be confidentially destroyed.
3. Records of consumer complaints that are received by the Mediation Services Program should be retained for three years after the case is closed followed by confidential destruction.
4. Administrative records including, but not limited to, budget reports, travel expense claims, purchase agreements, and property survey reports, should be retained, in the Board's offices for eight years from the end of the fiscal year in which the document was prepared, followed by confidential destruction. Employee personnel files, which include documents relating to health benefits, payroll deductions, performance appraisals, etc., should be retained for eight years beyond separation followed by confidential destruction.

Mr. Skobin moved to adopt the Committee's recommendation. Mr. Quaranta seconded the motion. The motion carried unanimously.

Implementation of the Policy will require approval of the Director of the Department of General Services, and the Director of the State Archive and Museum.

10. **SEMI-ANNUAL UPDATE CONCERNING THE NUMBER OF MONTHLY HITS TO THE BOARD'S WEB SITE AND WHERE INFORMATION IS BEING SOUGHT – ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel updating the number of monthly hits to the web site and where the information is being sought. Ms. Kindel reported that the Board's web site averages 23,420 hits per month. This is 3,700 hits more per month than the last update. Mr. Skobin commented that it was an "outstanding" web site. The members requested that the next update contain historical information for comparison purposes.

11. **ANNUAL REPORT ON BOARD DEVELOPMENT PROGRAM – BOARD DEVELOPMENT COMMITTEE**

The members were provided with a memorandum from Tom Novi, Kathy Tomono, and Polly Rowsey reporting on the Board Development Program. Mr. Novi indicated that the memo summarizes a schedule and suggested list of topics for 2003.

12. **STATUS REPORT ON THE COOPERATIVE REVIEW OF THE BOARD'S  
STATUTES AND REGULATIONS – POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Howard Weinberg updating the status of the cooperative review of the Board statutes and regulations as well as draft language.

- a. Consideration of proposed non-substantive amendments to regulations which change references to “Executive Director” from “secretary” and to “administrative law judge” from “hearing officer” to reflect the current organizational structure and duties of the Board staff and administration (13 CCR §§ 550, 551.1, 551.2, 551.11, 551.12, 551.13, 552, 553.40, 555, 555.1, 556, 557, 558, 560, 561, 562, 566, 570, 571, 572, 573, 574, 575, 577, 584, 585, 587, 588, 589, 590, 592, 593, 595, and 598).

Mr. Stevens moved to adopt the proposed text. Mr. Quaranta seconded the motion. The motion carried unanimously.

- b. Consideration of proposed regulation amendment that gives the Board explicit authority to dismiss protests (13 CCR § 551.8).

With regards to the proposed text, in paragraphs (d) and (e), Mrs. Brogin suggested moving protests after appeals for consistency. Mr. Skobin moved to adopt the proposed text as amended. Mr. Quaranta seconded the motion. The motion carried unanimously.

- c. Consideration of proposed new regulation that incorporates law and motion practice before the Board in a single source, including but not limited to, motions to consolidate or bifurcate, motions in limine, motions for reconsideration, and motions related to discovery (13 CCR § 551.9), or in the alternative consideration of proposed amendment to Vehicle Code which incorporates Government Code section 11511.5 into hearings on protests (Veh. Code § 3066).

The Board members were presented with two options with regards to law and motion practice before the Board. One option involved a new regulation (13 CCR § 551.9) and the second option involved an amendment to Vehicle Code § 3066. Mr. Flesh moved to approve the proposed text. Mr. Flesh moved to amend his motion to approve the statutory text and not the regulation. Mr. Wilson seconded the motion. The motion carried unanimously.

- d. Consideration of proposed regulation amendment which allows the Board to waive the annual fee for a new motor vehicle manufacturer or distributor who either does not sell vehicles in California or does not have an independent dealer or dealer branch in California (13 CCR § 553).

Mrs. Brogin moved to approve the proposed text. Mr. Stevens seconded the motion. The motion carried unanimously.

- e. Consideration of proposed new regulation which formalizes the procedure for litigants to make motions for change in venue and provides for Board recovery of travel and hearing facilities' costs when the party requesting the change cancels the proceeding at the new venue (13 CCR § 551.10).

Mr. Skobin moved to approve the proposed text. Mr. Flesh seconded the motion. The motion carried unanimously.

At the conclusion of Agenda items 12(a)-(e), Mr. Hitchcock read the following statement:

"Given the Board's decision to go forward with the proposed new regulations and amendments, I hereby delegate to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. Notice of the proposed rulemaking will be published in the California Regulatory Notice Register and will be sent to the Public Mailing List. During the public comment period, I want to invite and encourage written and oral comments. Additionally, a public hearing at the Board's offices will be held to accept oral and written comments."

"By the Board instructing staff to go forward with the proposed rulemaking, this does not necessarily indicate final Board action. If any written or oral comments are received, the full Board will consider the comments and reconsider the text of the proposed rulemaking. Furthermore, if the staff decides that substantive modifications to the proposed text are necessary, the Board will consider those modifications at a noticed meeting. However, nonsubstantive changes involving format, grammar, or spelling suggested by the Office of Administrative Law or the staff will not be considered by the Board because they are non-regulatory in nature. They will be considered by the Executive Committee and ultimately reported to the Board at the next meeting. If there are no written or oral comments received, then the rulemaking process will proceed without further Board involvement."

- f. Consideration of proposed non-substantive amendments to Vehicle Code which changes references to "Executive Director" from "secretary" and to "administrative law judge" from "hearing officer" to reflect the current organizational structure and duties of the Board staff and administration (Veh. Code §§ 3014, 3015, 3050.1, 3050.2, 3050.3, 3050.4, 3050.6, 3050.7, 3052, 3066 and 3067).

Mr. Flesh moved to approve the proposed text. Mrs. Brogin seconded the motion. The motion carried unanimously.

- g. Consideration of proposed amendment to Vehicle Code which removes any reference to Assistant Executive Secretary and changes the Executive Director position from a civil service to an exempt position (Veh. Code § 3014).

Mr. Soteras moved to approve the proposed text. Mr. Quaranta seconded the motion. The motion carried unanimously.

- h. Consideration of proposed changes to the Guide to the New Motor Vehicle Board to include information on closed hearings and protective orders.

Mr. Quaranta moved to approve the proposed text. Mrs. Brogin seconded the motion. The motion carried unanimously.

Mr. Skobin indicated that the issues of warranty and incentive chargebacks, Vehicle Code §§ 3065 and 3065.1 would be discussed at the next meeting.

13. **ANNUAL REPORT ON STATUS OF REVISIONS TO THE ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW JUDGES – POLICY AND PROCEDURE COMMITTEE**

At the September 12, 2000, General meeting, the members adopted a revised procedure for assigning cases to the Board's Administrative Law Judges ("ALJs"), and asked that staff update the Board periodically on how the new procedure was working. Ms. O'Neill-Stewart reported that there were a few problems in the assignment of ALJs due to vacation schedules and unavailability. When one ALJ is unavailable the assignment shifts to the next ALJ in order. However, over time, this ALJ receives an inordinate amount of cases and it can be burdensome. Ms. O'Neill-Stewart did not propose a solution at this time and suggested that this matter be agendaized for consideration at the January 2003 meeting.

14. **DISCUSSION CONCERNING LEGISLATION - POLICY AND PROCEDURE COMMITTEE**

- a. Pending Legislation that impacts the Board.
  - (1) House of Representatives Bill 2215 (Sec. 11028).
- b. Legislation of general interest.
  - (1) Senate Bill 91 [Chaptered September 9, 2002].
  - (2) Assembly Bill 2397 [Chaptered September 27, 2002].

The members were provided with a memorandum from Tom Novi and Robin Parker summarizing the legislation that impacts the Board and bills of general interest. The summary analyzes the current law, the legislation, and the impact on the Board. Ms. Parker reported that House of Representatives Bill 2215 (makes arbitration voluntary in dealer-manufacturer disputes) was passed by Congress and President Bush had until November 4, 2002, to act on the legislation. Subsequent to the meeting, President Bush signed the bill.

15. **SELECTION OF BOARD MEETING DATES FOR 2003**

The members were provided with a memorandum from Tom Novi and Robin Parker concerning upcoming Board meeting dates. The members selected the following schedule for 2003:

- January 7, 2003, Los Angeles – General meeting
- March 11, 2003, Sacramento – General meeting and CMCD A Dealer Day
- April 23, 2003, Indian Wells – Special meeting (Industry Roundtable) and CMCD A State Convention
- April 24, 2003, Indian Wells – General meeting and CMCD A State Convention
- June 10, 2003, Sacramento – General meeting
- September 16, 2003, Los Angeles – General meeting
- November 7, 2003, San Francisco – General meeting
- December 9, 2003, Sacramento – Special meeting

At the December 5, 2002, Special meeting, the members will review the schedule.

16. **EXECUTIVE DIRECTOR'S REPORT**

- a. Administrative Matters.
- b. Status of Protests.
- c. Status of Petitions.
- d. Status of Appeals.
- e. Judicial Review.
- f. Notices Filed Pursuant to Vehicle Code Sections 3060 and 3062.
- g. Other.

Mr. Novi provided the members with a Report on Administrative Matters which identified all pending projects, the Board manager and committee assigned, estimated completion dates, and status.

The members were also provided with a copy of the Executive Director's Report.



17. **ADJOURNMENT**

Mrs. Brogin introduced her daughters, Lori and Jennifer Brogin, who attended the meeting.

With no further business to discuss, the meeting was adjourned at approximately 12:05 p.m.

Submitted by

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TOM NOVI  
Executive Director

APPROVED: \_\_\_\_\_  
Frederick E. (Fritz) Hitchcock  
President  
New Motor Vehicle Board